

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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BRADLEY J. BUSBIN,

Plaintiff(s),

v.

SHOTGUN CREEK INVESTMENTS,  
LLC, et al.,

Defendant(s).

Case No. 2:20-CV-1299 JCM

ORDER

Presently before the court is appellant Bradley J. Busbin (“Busbin”), Trustee of The Gonzales Charitable Remainder Unitrust One’s (“Busbin”) appeal of the bankruptcy court’s order granting partial summary judgment. (ECF Nos. 1 (notice of appeal); 18 (opening brief)). Appellees Shotgun Creek Investments, LLC, Shotgun Creek Las Vegas, LLC, Shotgun Investments Nevada, LLC (collectively the “Shotgun entities”), and the Northern Trust Company, LLC (“Northern Trust”) (together with the Shotgun entities, the “lenders”) filed a response (ECF No. 44), to which Busbin replied (ECF No. 45).

Busbin appeals the bankruptcy court’s grant of partial summary judgment as to count one of his adversary complaint, in which he sought declaratory judgment that his interest in the bankruptcy estate property was superior to the deeds of trust. Busbin contends that the bankruptcy court erred in holding that issue preclusion foreclosed his claim.

This court has jurisdiction over an appeal from an order of a bankruptcy court under 28 U.S.C. § 158. The court reviews a bankruptcy court’s conclusions of law, including its interpretation of the bankruptcy code, on a *de novo* basis. *In re Rains*, 428 F.3d 893, 900

1 (9th Cir. 2005); *In re Maunakea*, 448 B.R. 252, 258 (D. Haw. 2011). Findings of fact are  
2 reviewed for clear error. *United States v. Hinkson*, 585 F.3d 1247, 1260 (9th Cir. 2009).

3 The instant action arises from the jointly administered bankruptcy cases of Desert  
4 Land, LLC and Desert Oasis Apartments, LLC (collectively “the debtors”). (ECF No. 1).  
5 Busbin is a judgment creditor in both cases.

6 The debtors owned what the parties and bankruptcy court refer to as “Parcel A,”  
7 which is real property located along Las Vegas Boulevard, across from Mandalay Bay. (ECF  
8 No. 18 at 13). Busbin’s predecessor in interest, Tom Gonzales (“Gonzales”), originally  
9 loaned the sum of \$41.5 million to debtors, which loan was secured by a deed of trust against  
10 Parcel A. Busbin reconveyed his deed of trust under Chapter 11 bankruptcy proceedings to  
11 debtors in exchange for ownership in other real properties and—most important and relevant  
12 to this appeal—a “Parcel A Transfer Fee” of \$10 million in the event Parcel A was sold or  
13 transferred. (*Id.*). The crux of this appeal is the priority of the transfer fee against the deeds  
14 of trust on Parcel A.

15 As further background, between 2011 and 2017, the debtors obtained numerous loans  
16 from appellees Shotgun entities and Northern Trust, using Parcel A as collateral.<sup>1</sup> (ECF No.  
17 44 at 21). In light of these additional loans secured by Parcel A, Busbin filed numerous  
18 lawsuits<sup>2</sup> in the bankruptcy court, this district court, and the Ninth Circuit to clarify the  
19 nature of his interest in Parcel A.

20 In 2018, a different judge in this district entered a money judgment for Busbin in the  
21 amount of \$13,177,708.33—representing his \$10 million transfer fee plus interest—in his  
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25 <sup>1</sup> Per the settlement agreement as confirmed by the Bankruptcy Appellate Panel of the  
26 Ninth Circuit (“the bankruptcy settlement agreement”).

27 <sup>2</sup> This issue was litigated in an April 21, 2003, bankruptcy confirmation order; again in a  
28 Ninth Circuit Bankruptcy Appellate Panel decision on March 31, 2004; in a December 9, 2011,  
order in a related 2011 lawsuit in this district, which the Ninth Circuit affirmed; in another  
related 2015 lawsuit in this district; and finally in a March 27, 2018, order in a related lawsuit in  
this district.

1 breach of contract suit against the debtors,<sup>3</sup> but the court rejected Busbin’s request for  
2 equitable relief by way of reprioritization and subordination of the lenders’ liens on Parcel A.  
3 (ECF No. 18 at 21–22).

4 Ultimately, the debtors’ Chapter 11 trustee sold Parcel A at an auction sale on June 5,  
5 2020, for \$15,600,000, which was insufficient to pay the claims of Busbin and the lenders,  
6 along with the remaining creditors. (ECF No. 1 at 39).

7 The parties do not dispute that Busbin’s transfer fee is not a lien or preemptive  
8 property right since that issue was already litigated and resolved by the Ninth Circuit. (ECF  
9 No. 18 at 18). The question before this court is whether a court of proper jurisdiction has  
10 already decided the issue of the priority status of Busbin’s interest in Parcel A, therefore  
11 barring it from being litigated again. The bankruptcy court determined that a 2011 case in  
12 this district and the Ninth Circuit appeal that followed had already decided the issue, while  
13 Busbin asserts that the contention surrounding *priority* of payments is distinct from previous  
14 relevant court decisions. (*Id.* at 35).

15 Determining the applicability of issue preclusion (or collateral estoppel) “is a mixed  
16 question of law and fact in which the legal issues predominate,” *Oyeniran v. Holder*, 672  
17 F.3d 800, 806 (9th Cir. 2012); therefore, the court reviews this issue *de novo*. Upon *de novo*  
18 review, the court finds that the bankruptcy court did not err in applying issue preclusion to  
19 bar Busbin’s claim as to count 1.

20 Judge Jones in his 2011 district court opinion previously held that Busbin’s transfer  
21 fee contained within the bankruptcy settlement agreement did not create a lien—including an  
22 equitable lien—and thus refused to subordinate the lenders’ liens to Busbin’s interest. (ECF  
23 No. 18 at 17). The court clarified that Busbin “simply has, potentially, an immediate claim  
24 to \$10 million under the confirmation order due to the transfer of Parcel A.” (*Id.*).  
25 Affirming Judge Jones’s 2011 decision, the Ninth Circuit further held that Busbin’s interest  
26 was neither a lien nor a preemptive property right on Parcel A since “the [settlement]  
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28 <sup>3</sup> For violating the financing limit of the bankruptcy settlement agreement—to wit, the  
debtors borrowed beyond the \$25 million limit contained within the agreement.

1 agreement contain[ed] no language suggesting that the transfer fee was anything but a **right**  
 2 **to receive a certain sum of money in the event of a Parcel A transfer.**” (*Id.*) (emphasis  
 3 added).

4 Though it reviews *de novo*, this court agrees with bankruptcy Judge Spraker that  
 5 Busbin’s argument “slices the issues too thin.” By previously holding that Busbin’s interest  
 6 was not elevated to the status of a lien, the prior courts of proper jurisdiction held his interest  
 7 to be junior to the lenders’ deeds of trust.

8 It is evident from these prior decisions that Busbin’s interest has been determined to  
 9 be an unsecured right to payment contingent upon a future act under the bankruptcy  
 10 settlement agreement. In other words, the issue underlying Busbin’s claim on this appeal is  
 11 identical to prior proceedings; was actually litigated and decided in prior proceedings; was  
 12 given a full and fair opportunity to be litigated; and was necessary to decide the merits in  
 13 prior proceedings.<sup>4</sup> *Janjua v. Neufeld*, 933 F. 3d 1061, 1065 (9th Cir. 2019).

14 Therefore, this issue cannot be re-litigated.<sup>5</sup> *See Dodd v. Hood River Cty.*, 59 F.3d  
 15 852, 863 (9th Cir.1995) (“Under collateral estoppel, once a court has decided an issue of fact  
 16 or law necessary to its judgment, that decision may preclude re-litigation of the issue in a suit  
 17 on a different cause of action involving a party to the first case.”).

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 20 <sup>4</sup> And Busbin’s subsequent money judgment received in 2018 from Judge Jones in this  
 21 district, based on his transfer fee interest in Parcel A, does not alter this court’s analysis. Indeed,  
 22 Judge Jones held in that 2018 decision that “it would be an error of state law to...permit a  
 23 judgment creditor to advance his lien priority as against [the lenders] beyond what would  
 24 normally be permitted under Chapter 21 [of Nevada Revised Statutes].” (ECF No. 1 at 17).  
**Thus, Busbin’s many attempts over the years to elevate his interest into a priority payment**  
**above the liens on Parcel A have been consistently rebuffed by numerous courts and cannot**  
**be re-litigated again now.**

25 This does not leave Busbin without a potential remedy. As Judge Jones stated after  
 26 entering the money judgment in Busbin’s favor: “Plaintiff may then, if he wishes, register that  
 27 judgment as a lien against any property of Defendants so subject under state law, and state law  
 will govern the priority of such a lien.” (*Id.* at 30). But the issue of priority of Busbin’s interest  
 is collaterally estopped in federal court since it has already been decided on numerous occasions.

28 <sup>5</sup> Because this court decides this appeal based on issue preclusion, it need not  
 comment on the remaining issues of appeal, which are foreclosed by issue preclusion *ab*  
*initio*.

1 Accordingly,

2 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the bankruptcy  
3 court's July 1, 2020, order as to count one of the adversary proceeding (case no. 19-01108-  
4 GS), be, and the same hereby is, AFFIRMED.

5 DATED March 18, 2022.

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7 UNITED STATES DISTRICT JUDGE  
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